UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH JAMES HARDING

Appeal No. 2005-1109
Application No. 09/781,733

HEARD: AUGUST 10, 2005

Before PATE, BAHR and MEDLEY[1], Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6-32. These are the only claims in the application.

The invention is in the field of machines that rapidly produce cushioning material on demand from paper stock. The claimed invention is directed to the monitoring and totaling of the amount of stock material used during a period of time and an apparatus that stores this information. The claimed invention may

[1] Judge Medley has been substituted on the panel for Judge Nase who has retired. *See In re Bose*,772 F.2d 866, 869, 227 USPQ 1, 3 (Fed. Cir. 1985).

be further understood with reference to the appealed claims appended to appellant's brief.

The references of record relied upon as evidence of obviousness are:

McLean	5322586	June 21, 1994
Ratzel	5571067	Nov. 5, 1996

The Rejections

Claims 6-11, 13, 15-24 and 27-32 stand rejected under 35 USC § 102 as anticipated by Ratzel.

Claims 12, 14, 25-26 stand rejected under 35 USC § 103 as unpatentable over Ratzel in view of McLean.

For a full explanation of the examiner's rejection, reference is made to the examiner's answer. For a further understanding of appellant's response thereto, reference is made to the brief and the reply brief.

Opinion

We have carefully reviewed the claimed subject matter in light of the prior art and the arguments of the appellant and the examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish that the claims of appellant lack novelty under section 102 or are *prima facie* obvious under section 103. Our reasons follow.

The disclosure of Ratzel is directed to a method for making cushioning material out of linear stock. In order to make the stock of the correct length

several methods are disclosed including a manual method, a time repeat method, a removal trigger method, and a length selection method. An automatic length selection method is also disclosed wherein a process controller automatically produces cushioning of an appropriate length for each package as it comes to the packing station. In order to accomplish automatic control, a length sensing or measuring device 12 must be operated to measure the length of the cushioning as it is actually produced. Ratzel discloses such a measuring device 12, with a rotating member 80, having openings 84, cooperating with a photoelectric sensor 86 to count the angular movement of the cushioning gear assembly 54 that the rotating member 80 is attached to.

The automatic control is effectuated by process controller 11. As shown in the Figure 1, it accepts pulses from the measuring device 12, reads a barcode on a package B to be filled with cushioning, and sends activate/deactivate signals to the motor 70. We infer the use of a look-up table storing lengths of desired cushioning or a subroutine that calculates desired lengths in process controller 11 based on information contained in the bar code. We agree with the examiner that the process controller must be storing the incremental length of each cushion piece as it is being made based on summing the number of pulses retrieved from the measuring device 12. However, this is merely storing the cumulative length of a single cushioning piece as appellant argues. If the claim were limited to a single piece of cushioning and "the period of time" recited in the claim could be considered to be the time necessary to produce that single piece of cushioning or on even smaller time increment, the examiner's point would be

well taken. However, all claims on appeal are directed to a plurality of pieces of cushioning. We do not find any disclosure of storing the lengths, i.e., the total amount of stock material passed, of all of a plurality of cushioning products manufactured in a set period of time as required by claim 6. Nor do we find the step of storing cumulative length of a plurality of cushioning products as required by claim 20, 21 or 22. Thus, Ratzel fails to anticipate claims 6-11,13, 15-24 and 27-32.

While we agree with the examiner that McLean discloses a general purpose PC-type computer with RAM and hard drive memory, the disclosure thereof cannot ameliorate the deficiencies of the Ratzel reference. Thus, the combined teachings fail to establish the *prima facie* obviousness of the claims rejected under section 103.

In Summary, the rejections of all claims on appeal are reversed.

REVERSED

WILLIAM F. PATE III)
Administrative Patent Judge)
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) BOARD OF PATENT
JENNIFER D. BAHR)
Administrative Patent Judge) APPEALS AND
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) INTERFERENCES
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